IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

Bail Appl..No. 5917 of 2007(C)

CRMP.3173/2007 of DISTRICT COURT, PALAKKAD
[CRIME NO.201/2007 OF KOZHINJAMPARA POLICE STATION]

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: PETITIONERS

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1. CHINNA KOUNDER, AGED 78 YEARS,
S/O. MUTHU KOUNDER, MUTTIMAM, PALLAM,
NATTUKAL P.O., CHITTUR TALUK, PALAKKAD DISTRICT.

2. MUTHUKRISHNAN, AGED 21 YEARS,
S/O. CHINNA KAUNDER, MUTTIMAM PALLAM,
NATTUKAL P.O., CHITTUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, COCHIN-682 031.

2. THE SUB INSPECTOR OF POLICE,
KOZHINJAMPARA POLICE STATION, KOZHINJAMPARA,
PALAKKAD DISTRICT.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.5917 of 2007

Dated this the 1st day of October 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 and 2 in a crime registered initially for offences punishable inter alia under Section 324 I.P.C. In the course of investigation, the Section of offence has been altered to 326 I.P.C after realising that the injured has suffered a fracture.

2. The alleged incident took place on 29/7/2007. The petitioners are father and son. The de facto complainant is a person related to the accused persons. Consequent to a dispute relating to property, the de facto complainant was allegedly assaulted by the accused persons in furtherance of their common intention. Dangerous wooden stick was allegedly used for the commission of the crime. A fracture was suffered by the de facto complainant. The injured suffered his fracture - zygomatic arch and temporal bone on the left side. Investigation is in progress. The petitioners apprehend imminent arrest.

3. The learned counsel for the petitioners submits that the first petitioner/accused is a person aged about 78 years. The second accused is the son of the first accused. He is a student of

the Engineering College. He is aged about 21 years only. In these circumstances, it is prayed that directions under Section 438 Cr.P.C may be issued in favour of the petitioners. The learned counsel for the petitioner further submits that the first accused is ill and is undergoing treatment as can be seen from the documents produced along with the petition.

4. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are no circumstances justifying or warranting the invocation of the equitable discretion under Section 438 Cr.P.C. The petitioners may be directed to resort to the ordinary course of appearing before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail.

5. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I do not find any circumstances which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The advanced age of the first petitioner and the young age of the second petitioner cannot persuade this court to invoke the

jurisdiction under Section 438 Cr.P.C. The petitioner must appear before the learned Magistrate and seek the compassion of law under Section 437 Cr.P.C by urging their infirmity, age etc. and I am not persuaded to agree that any circumstance exists justifying the invocation of the discretion under Section 438 Cr.P.c.

6. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007